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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 384

COY THOMPSON,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF

PETITION FOR WRIT OF CERTIORARI

Coy Thompson,

Pro se.

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SUPREME COURT OF THE UNITED STATES

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No. 386

COY THOMPSON,

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vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent

PETITION FOR WRIT OF CERTIORARI

Petitioner Coy Thompson repectfully shows to the Court as follows:

That he is a resident of the County of Cook, State of Illinois, and is a citizen of the United States, having been born at Hardin, Kentucky, on September 22, 1896.

That he was sentenced by the Criminal Court of Cook County, Chicago, Illinois, on the 6th day of July, 1931, to one hundred (100) years in the Illinois State Penitentiary on a charge of murder.

Upon prosecuting a writ of error out of the Supreme Court of Illinois, which is the highest court within the State of Illinois in which a decision may be had, said court handed down an opinion on the 19th day of September,

1945, reversing and remanding the case to the trial court for a new trial on the ground that the trial of Petitioner had been in violation of Petitioner's constitutional right to due process of law guaranteed to every defendant in a criminal case under the constitution of the State of Illinois and the Fourteenth Amendment to the Constitution of the United States.

Counsel for the People filed a petition for rehearing of the case which was granted by said court on the 15th day of November, 1945. On the 26th day of November, 1945, counsel for the People filed a motion to dismiss the writ of error on the ground that Petitioner's case had been reviewed and affirmed by the Supreme Court of Illinois on a previous writ of error, such affirming order having been entered on the 18th day of November, 1942.

On the 23rd day of January, 1946, the Supreme Court of Illinois handed down another opinion in which the writ of error, under which the trial and conviction was reversed and remanded, was dismissed. In this opinion dismissing the writ of error, the Supreme Court of Illinois knowingly closed its eyes to the denial of due process of law under both State and Federal Constitutions, which said court was judicially aware of on the 19th day of September, 1945 (approximately four (4) months before the court once again shut its eyes to the facts in the case), and stated that under the doctrine of *res judicata* "A judgment or decree having been affirmed by this court must be regarded as free from all error."

Petitioner filed a timely petition for rehearing before said court in which it was pointed out that the court's oath of office compelled said court to perform its duty in upholding the Constitution of the United States; that no case or authority cited by said court in its opinion was above the Constitution of the United States, and that the action

taken by the court was nothing more than a continuation of the original denial of due process of law by the trial court.

On the 13th day of March, 1946, the Supreme Court of Illinois denied the petition for rehearing.

History of the Case

On the 30th day of June, 1931, Petitioner was arrested by the Chicago police and placed in the city jail where he was held incommunicado until the morning of July 6th, 1931. Petitioner was not taken before any justice of the peace, police magistrate, judge, or any judicial official authorized to conduct a preliminary hearing or investigation for the purpose of determining whether or not the prisoner should be committed to jail to answer to any offense which might be placed against him, as required by statute (Ill. Rev. Stat. 1943, Chap. 38, Pars. 660, 664, 673, 679, 681, 682, pp. 1222-1223).

On the 6th day of July, 1931, Petitioner was taken by Chicago police authorities to the Cook County jail where Petitioner was turned over to the custody of the county authorities who kept him in the Cook County jail only long enough to "book" him (which was approximately one-half hour) and ask him routine questions before said county authorities conveyed Petitioner before the Criminal Court of Cook County, the Honorable Philip J. Finnegan being the presiding judge.

The record shows the convening order for the Cook County grand jury which indicates said grand jury was summoned to serve as grand jurors on the 6th day of July, 1931; that said grand jury returned an indictment against Petitioner on July 6th, 1931, and that said indictment was filed by the clerk of said court on the 6th day of July, 1931.

Upon being taken before the Criminal Court of Cook County, the Petitioner immediately informed the trial judge

that he (the Petitioner) had been held incommunicado by Chicago police since the date of his arrest, and asked for a continuance in order that he might communicate with friends in the City of Chicago and relatives from out of the State so that such friends and relatives might retain counsel to defend him. The trial judge stated that he could not grant a continuance for such a reason as he (the judge) had already appointed counsel to defend Petitioner, and that the trial had to begin immediately. Petitioner objected to all this but did not succeed in altering anything by such objections, because the trial began immediately with Petitioner being unable to contact anyone on the "outside."

The court, according to the record, appointed on its own motion, Attorney Benjamin C. Bachrach, Public Defender of Cook County, to defend Petitioner, but a Wilbert Crowley, who Petitioner believes was an assistant in Mr. Bachrach's office at that time, actually was the attorney in the courtroom during the trial.

The trial began immediately. Petitioner was arraigned on a charge of murder and entered a plea of "Not Guilty" to the indictment. Appointed counsel immediately waived a jury trial and submitted the case for hearing before the trial court without a jury. Appointed counsel did not ask Petitioner if this was agreeable to Petitioner, nor did said attorney discuss the case with Petitioner before the trial. The attorney did, however, ask Petitioner an occasional question while State witnesses were being questioned. Needless to state, there were no witnesses for the defense.

After hearing the testimony of witnesses for the State the court adjudged Petitioner guilty of murder as charged in the indictment. Appointed counsel then made a motion for a new trial and a motion in arrest of judgment, both of which motions being overruled by said court. The court immediately sentenced Petitioner to serve a term of one

hundred (100) years in the penitentiary of the State of Illinois.

Appointed counsel did not ask for a stay of mittimus; he did not ask for time to file a bill of exceptions; he made no effort to appeal, nor did he ask Petitioner if such appeal should be made. Petitioner has not seen, nor heard from, said appointed counsel since the so-called "trial."

All these proceedings took place on the 6th day of July, 1931, with the purported "trial" lasting approximately one (1) hour, and by 12:30 P. M. on the 6th day of July, 1931, Petitioner was taken direct from the courtroom of the Criminal Court of Cook County to the Illinois State Penitentiary at Joliet, Illinois.

A short time after his commitment to the penitentiary at Joliet, Petitioner was transferred to the Chester State Hospital for the Criminal Insane at Chester, Illinois. On the 18th day of December, 1933, a petition for appointment of a conservator was notarized, in which said petition the County Court of Randolph County, Illinois, was requested to appoint a conservator on the ground that Petitioner "is or is supposed to be an idiot, an insane, distracted or feeble-minded person, drunkard or spendthrift, who by reason of unsoundness of mind, is incapable of managing and caring for his own estate" (See Exhibit D, Statement of Jurisdiction). Such petition was granted, a conservator was appointed, and such order entered was not revoked or rescinded until the 23rd day of October, 1945 (See Exhibit E, Statement of Jurisdiction).

Some time after Petitioner was confined in the Chester State Hospital for the Criminal Insane at Chester, Petitioner was transferred to the Psychiatric Division of the Illinois State Penitentiary at Menard, Illinois. Petitioner was then transferred from the Psychiatric Division to the Illinois State Penitentiary at Statesville (Joliet), Illinois, and was subsequently transferred back to the Illinois State

Penitentiary at Menard, Illinois. The Petitioner is unable to remember all dates in connection with the various transfers he went through.

Due to institutional rules preventing inmates from obtaining attorneys to work on their cases, and preventing inmates from accomplishing anything before the courts in connection with their cases (See *U. S. ex Rel. Foley* v. *Ragen*, 52 F. Supp. 265, 267), Petitioner was unable to do anything about his case until the Federal District Judge of the Northern Division of the State of Illinois, the Honorable Judge Barnes, ordered such institutional rules changed. Prior to such change, Petitioner sent a letter (via "underground" channels) to Attorney Charles H. Thompson of Harrisburg, Illinois, concerning Petitioner's case and when Mr. Thompson's answer was received at the institution Petitioner was called to the Warden's office, after which he was placed in solitary confinement on bread and water for thirty-four (34) days for refusing to tell the Warden how such letter to Attorney Thompson left the institution.

Petitioner sued out a writ of error from the Supreme Court of Illinois, claiming a denial of due process of law guaranteed to every defendant under the constitution of the State of Illinois and the Fourteenth Amendment to the Constitution of the United States. On the 19th day of September, 1945, said Supreme Court handed down an opinion reversing and remanding the case to the trial court for new trial on the ground that Petitioner's conviction was obtained through denial of due process of law under both the constitution of the State of Illinois and the Fourteenth Amendment to the Federal Constitution.

Counsel for the People filed a timely petition for rehearing, which was granted.

Counsel for the People then filed a motion to dismiss the writ of error, as aforesaid, and the Supreme Court of Illinois dismissed the writ of error.

Petitioner filed a timely petition for rehearing, which was denied by the Supreme Court of Illinois, as aforesaid.

Statement of Facts

The record before this Court will show that Petitioner was arraigned, required to enter a plea to the charge contained in the indictment, counsel was appointed, that the trial judge illegally appointed counsel to represent Petitioner, that the purported "trial" began immediately before Petitioner could even discuss the case with the appointed counsel, that no time was allowed in which to investigate or examine the case so that a proper defense could be presented, that no time was allowed in which to secure counsel of his own choice or in which to subpoena witnesses in Petitioner's behalf, that the trial proceeded to an immediate conclusion without Petitioner ever having left the courtroom after he had entered it, that Petitioner was convicted and sentenced without having left the courtroom after he had once entered it (R. 4-6).

The record in this case will further show that on the same date that the above "trial" proceedings were had, namely, July 6th, 1931, the grand jury was convened (R. 1), an indictment was returned against Petitioner (R. 1), and that said indictment was filed by the clerk of the trial court (R. 3).

The record further shows the trial court appointed counsel on its own motion and without any request from Petitioner (R. 4), and that the "trial" immediately followed the appointment of such counsel (R. 4).

The record also shows that Petitioner entered a plea of "Not Guilty" to the charge against him (R. 4).

Jurisdiction

This Court has jurisdiction to review this cause under Section 237(b) as amended 28 U. S. C. A. Section 344(b), of the Judicial Code of the United States.

Questions Presented

There are two questions presented to this Court: (1) Has Petitioner been denied due process of law under the Fourteenth Amendment to the Constitution of the United States? and (2) Does the doctrine of *res judicata* supersede the Fourteenth Amendment to the Constitution of the United States?

Reasons Relied Upon for the Allowance of the Writ

So far as the Petitioner is informed this case does not present any new elements of criminal or constitutional law that have not heretofore been decided by this Court. The matters involved herein consist mainly of the denial of due process of law under the Fourteenth Amendment to a person charged with a capital offense. This Court has in the past, as will be shown by authorities cited in the Brief in Support of this Petition, consistently refused to permit a judgment to stand where a defendant was indicted, arraigned, tried, convicted and sentenced, on the same day, and this is especially true in capital cases where the defendant had entered a plea of "Not Guilty" and where the record does not show the defendant intelligently waived his constitutional rights. This Court has consistently maintained that such purported "trial" was a denial of due process of law under the Fourteenth Amendment.

The record in this case shows on its face such denial of due process of law to Petitioner, just as it shows that the Supreme Court first affirmed the judgment of the trial court,

then reversed and remanded the case to the trial court for a new trial, and finally dismissed the writ of error under which the case was reversed and remanded, which had the effect of re-affirming the judgment of the trial court. The record also shows that the Supreme Court of Illinois used the doctrine of *res judicata* to escape its statutory duty to see to it that every defendant in a criminal case was given the benefits of due process of law guaranteed to every defendant under the Fourteenth Amendment to the Constitution of the United States.

The record shows the trial court denied Petitioner due process of law, and it further shows that the Supreme Court of Illinois decided a Federal question in a way inconsistent with former rulings of this Court and in a manner that actually was an enlargement of the original denial of due process of law.

Although this case presents no new or undecided questions, the fact remains that the State courts of the State of Illinois have refused to grant Petitioner due process of law to which he is entitled under the Fourteenth Amendment, and that it becomes necessary to once again invoke the power and authority of this Court in order to obtain a privilege and right guaranteed to Petitioner under the Constitution of the United States.

Specification of Errors

The trial court erred in appointing counsel before Petitioner had complied with the statute; in appointing counsel when it was without power to appoint; in requiring an immediate "trial" of the cause before Petitioner was given an opportunity to consult with such appointed counsel, and before such appointed counsel had an opportunity to examine or investigate the case or prepare Petitioner's defense; in overruling a motion for a new trial; and overruling motion in arrest of judgment.

The Supreme Court of Illinois erred in 1942 when it affirmed the judgment of the trial court when the record properly before the Supreme Court showed a denial of due process of law; and when said Supreme Court dismissed the writ of error after reversing and remanding the case for a new trial.

WHEREFORE it is respectfully requested this petition for a writ of certiorari be allowed and the writ be granted to review the judgment of the Supreme Court of Illinois.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 386

COY THOMPSON,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinion Below

The opinion of the Supreme Court of Illinois rendered in this cause was printed in the advance sheets of the Illinois Official Reporter under date of March 27, 1946, in Volume 392 at page 589, an may also be found at R. 66.

Jurisdiction

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code of the United States, as amended 28 U. S. C. A. Section 344(b).

The order of the Supreme Court of Illinois became final on March 13, 1946, on which date said court denied the petition for rehearing (R. 87).

ARGUMENT

I

Has Petitioner been denied due process of law under the Fourteenth Amendment to the Constitution of the United States?

The statute of the State of Illinois governing the appointment of counsel for defendants in criminal cases is contained in full in Appendix A.

The certified record of the proceedings before the trial court clearly show: (1) That the grand jury which returned the indictment against Petitioner was convened on July 6, 1931 (R. 1); (2) That the indictment was handed down by said grand jury on July 6, 1931 (R. 1); (3) That said indictment was filed by the clerk of the trial court on July 6, 1931 (R. 3); That the case was assigned, by the Honorable Joseph Sabath, to the Honorable Philip J. Finnegan on July 6, 1931 (R. 4); (5) That Petitioner was arraigned before the Honorable Philip J. Finnegan on July 6, 1931 (R. 4); (6) That the trial judge, of its own motion, appointed the Public Defender of Cook County as counsel for Petitioner, in the following manner:

> "And it appearing to the Court that said Defendant, Coy Thompson, is not represented by Counsel, the Court of its own motion doth appoint Attorney Benjamin C. Bachrach, Public Defender of Cook County, Counsel for said Defendant in the trial of this cause."

and that such appointment of counsel was made on July 6, 1931 (R. 4); (7) That Petitioner entered a plea of "Not Guilty" to the charge contained in the indictment (R. 4); (8) That a jury was waived and the cause submitted to the trial court without a jury (R. 5); (9) That the trial court heard testimony of witnesses (R. 5); (10) That the

trial court found Petitioner guilty of Murder in manner and form as charged in the indictment (R. 5); (11) That the trial court overruled a motion for a new trial in the case (R. 5); (12) That the trial court overruled a motion in arrest of judgment (R. 5); (13) That the trial court sentenced Petitioner to the Illinois State Penitentiary for a term of one hundred (100) years (R. 6), and that all proceedings in this cause before the trial court took place on July 6, 1931 (R. 6).

An affidavit filed by Petitioner before the Supreme Court of Illinois shows that persons on the outside were denied the right to see or communicate with Petitioner after his arrest on June 30, 1931, because "Mr. Coy Thompson was being held incommunicado and that I nor anyone else could visit him until he was turned over to the custody of the Sheriff of Cook County, Illinois" (R. 22).

A letter from Warden Frank Sain of the Cook County Jail shows that Petitioner was: (1) Received at the Cook County Jail on July 6, 1931; (2) Committed to the penitentiary by the trial judge under a sentence of one hundred (100) years, and (3) Transported to the penitentiary on July 6, 1931 (R. 23).

Thus, it is clear that Petitioner, after being held incommunicado by Chicago police from June 30, 1931, to the morning of July 6, 1931 (R. 7-8), on which latter date he was turned over to the Cook County authorities for a period sufficient to enter Petitioner on their records and take Petitioner before the trial court, where Petitioner was arraigned, tried, convicted and sentenced to the penitentiary for a term of one hundred (100) years—and that at no time between the date of his arrest and his entrance into the penitentiary was Petitioner permitted to communicate with any friend, relative or any outside person.

The crime charged was Murder, a capital offense in the State of Illinois (Appendix B).

The entire proceedings, from the date of Petitioner's arrest to his incarceration in the Illinois State Penitentiary, was an uninterrupted denial of due process of law guaranteed to every defendant by the Fourteenth Amendment to the Constitution of the United States.

II

Does the doctrine of *res judicata* supersede the Fourteenth Amendment to the Constitution of the United States?

On November 18, 1942, in *People* v. *Thompson,* 381 Ill. 71, the Supreme Court of Illinois affirmed the judgment and sentence of Petitioner. This was on writ of error sued out by one Attorney "R. E. Smith, of Benton, for plaintiff in error" (R. 74) who was never authorized by Petitioner to act for him (nor has Petitioner knowledge of any person authorizing said attorney to act for Petitioner) (R. 74). Furthermore, Petitioner had no knowledge of the 1942 case prior to the time it was brought to the attention of the Supreme Court of Illinois by counsel for the People. Nevertheless, the Supreme Court of Illinois stated in its opinion, *People* v. *Thompson,* 381 Ill. 71, that "no authorities are cited supporting this position" (in the brief), while counsel for the People stated in his petition for rehearing that "an examination of the abstract * * * has on its cover Honorable Joseph Sabath as presiding judge, when the record * * * will show that the presiding judge was Hon. Philip J. Finnegan" (R. 34) and that "the defendant tells the court that he does not want the cause reversed and remanded for a new hearing, but would like for the Court to send the cause back with directions that he be sentenced to life imprisonment as of the original date of the judgment" (R. 43). Such was the case affirmed by the Supreme Court of Illinois in 1942.

On September 19, 1945, the Supreme Court of Illinois handed down its second opinion (R. 29-33) in which, after thoroughly discussing the illegal appointment of counsel by the trial court and commenting on the denial of a fair trial and due process of law under both State and Federal Constitutions and decisions, said court reversed and remanded the case to the trial court for new trial, stating that "Under the Federal authorities the indictment, arraignment, trial, and conviction on the same day, without representation by counsel of his own choosing, would certainly constitute want of due process of law" (R. 32) and that "Our conclusion is that the record in this case fails to show a compliance not only with the fourteenth amendment to the constitution of the United States, but also with the provision of the Illinois constitution guaranteeing every defendant in a criminal case due process of law" (R. 33).

In its final opinion of January 23, 1946, the Supreme Court of Illinois closed its eyes to the fact that Petitioner had been denied due process of law under the Illinois constitution and the Fourteenth Amendment to the Constitution of the United States and stated that "the plaintiff in error has previously had his day, not only in the trial court, but also in this court, and is not entitled to more than one review (R. 68), and further stated the doctrine of *res judicata* "must be applied to the case of plaintiff in error" (R. 67).

The doctrine of *res judicata* was not designed to prevent a litigant from obtaining a fundamental right guaranteed by the Constitution of the United States, and this is especially true in a criminal case involving a capital offense where the trial court denied a defendant due process of law.

The doctrine of *res judicata* was undoubtedly designed to prevent endless and unnecessary litigation in cases where personal liberty was not involved; where the matter before a reviewing court did not involve a denial of basic constitu-

tional rights under the Federal Constitution, and where the reviewing court on the first review properly reviewed the case and was alert to its duty to see to it that every litigant before it obtained his Federal constitutional rights—but the doctrine of *res judicata* was not intended to serve as an excuse for a reviewing court to cover up its own error, on the first review, of affirming an order obtained through a denial of constitutional rights guaranteed to every defendant under the Constitution of the United States.

The cases cited as authority for its action in the last opinion by the Supreme Court of Illinois undoubtedly referred to cases properly reviewed by the reviewing court on the first review, and involved matters other than basic constitutional rights guaranteed by the Federal Constitution. It can do no harm to point out that no case cited by the Supreme Court of Illinois in its last and final opinion is of sufficient caliber to overrule the Constitution of the United States.

When a reviewing court, acting in its capacity to review, knowingly refuses to grant basic constitutional rights guaranteed by the Fourteenth Amendment to the Constitution of the United States (as has been done in this case—cf. R. 29-33 with R. 66-68), said reviewing court thereby indicates that: (1) Its oath of office was mere compliance with the statute; (2) It is unable to, and incapable of, causing every litigant before it to obtain the Federal constitutional rights guaranteed to him; (3) It is incapable of correcting its own error, and (4) It is unfit to properly function as a reviewing court.

Authorities in Support of Questions Presented

I

Has Petitioner been denied due process of law under the Fourteenth Amendment to the Constitution of the United States?

The trial court was without power to appoint the Public Defender of Cook County as counsel for Petitioner:

> "Counsel should be of the defendant's own choice, and no power existed in the court to appoint the public defender."
>
> *People* v. *Shiffman*, 350 Ill. 243.

> "The record failed to disclose any opportunity was given the defendant to select his own counsel. He was entitled to that, if able to employ one. The court was not authorized to appoint counsel unless the prisoner complied with the requirements of the statute."
>
> *People* v. *Gruhl*, 388 Ill. 52.

> "This did not, however, authorize the court of its own motion to make the public defender his counsel."
>
> *People* v. *Shiffman*, 350 Ill. 243.

Under the Fourteenth Amendment to the Constitution of the United States (Appendix C), Petitioner was entitled to due process of law requiring opportunity to obtain counsel and properly prepare his defense:

> "It is, of course, true, as has many times been pointed out in this court, that every defendant, guilty or innocent, has a right to a fair trial, and that this right includes a reasonable opportunity for him to acquaint his counsel with the nature of his defense and an opportunity for the attorney to prepare."
>
> *People* v. *Jameson*, 387 Ill. 367;
> *People* v. *Shiffman*, 350 Ill. 243;
> *People* v. *Bopp*, 379 Ill. 184.

"Under the constitution the defendant was entitled to opportunity to employ counsel. A fair trial under the constitution includes reasonable opportunity for the attorney to prepare for trial."

People v. *Shiffman,* 350 Ill. 243;
People v. *Bopp;* 379 Ill. 184;
People v. *Kurant,* 331 Ill. 470.

"The trial of a person charged with a felony, especially one that is capital, is not an informal matter that should be rushed to an immediate conclusion, unless the record shows that all of the constitutional rights of the defendant have been preserved. The trial should be in accordance with the recognized rules of law and procedure, and to be represented by counsel is not an idle ceremony, but a substantial part of the law of the land, guaranteed by the constitution."

People v. *Nitti,* 312 Ill. 73;
People v. *Gardiner,* 303 Ill. 204;
People v. *Hoffman,* 379 Ill. 318.

"A defendant in every criminal case is entitled under the law to a reasonable time and full opportunity to prepare for his trial, and that right should always be guaranteed to him."

Dacey v. *People,* 116 Ill. 555;
Price v. *People,* 131 Ill. 223.

"Delusive interests of haste should not be permitted to obscure substantial requirements of orderly procedure."

People v. *Hoffman,* 379 Ill. 318.

In *Powell* v. *Alabama,* 287 U. S. 45, 77 L. Ed. 158, where counsel was appointed on the same date the indictment was returned, immediately followed by trial and conviction after the defendants entered pleas of not guilty, the Supreme Court said that the duty to assign counsel

"• • • Is not discharged by an assignment at such a time or under such circumstances as to preclude

> the giving of an effective aid in the preparation and trial of the case. To hold otherwise would be to ignore the fundamental postulate, already adverted to, 'that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard',"

and that

> "* * * It is not enough that counsel thus precipitated into the case thought there was no defense, and exercised their best judgment in proceeding to trial without preparation. Neither they nor the court could say what a prompt and thorough-going investigation might disclose as to the facts. No attempt was made to investigate. No opportunity to do so was given. Defendants were immediately hurried to trial."

In *Avery* v. *Alabama*, 308 U. S. 444, 84 L. Ed. 377, the Supreme Court said:

> "Denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guaranty of assistance of counsel cannot be satisfied by mere formal appointment."

In *Brown* v. *Mississippi*, 297 U. S. 278, 80 L. Ed. 682, the Supreme Court held that the freedom of a State to regulate procedure in its own courts, with its conception of public policy, may not offend "the principles of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."

In *Glasser* v. *United States*, 315 U. S. 60, 71, 86 L. Ed. 680, the Supreme Court said:

> "The trial court should protect the right of an accused to have the assistance of counsel. 'This protecting

duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record'. Johnson *v.* Zerbst, 304 U. S. 458, 465, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461."

II

Does the doctrine of *res judicata* supersede the Fourteenth Amendment to the Constitution of the United States?

In *Smith* v. *O'Grady*, 312 U. S. 329, 331, 61 S. Ct. 572, 573, in referring to the Federal Constitution, the Supreme Court said:

> "That Constitution is the supreme law of the land, and 'Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution'."

In *Mooney* v. *Holohan*, 294 U. S. 103, 113, 55 S. Ct. 340, 342, the Supreme Court made almost the same statement:

> "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution."

In *Hansberry* v. *Lee*, 311 U. S. 32, 40, 61 S. Ct. 115, 117, the Supreme Court said:

> "State courts are free to attach such descriptive labels to litigation before them as they may choose and to attribute to them such consequences as they think appropriate under state constitutions and laws, subject only to the requirements of the Constitution of the United States. But when the judgment of a state court, ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want

of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes. Western Life Indemnity Co. *v.* Rupp, 235 U. S. 261, 273, 35 S. Ct. 37, 40 59 L. Ed. 220."

Conclusion

It is respectfully suggested that the action of the Supreme Court of Illinois, in its last and final opinion, was an enlargement of the original denial of due process of law by the trial court, and that such action did not cure the denial of due process of law under the Fourteenth Amendment.

WHEREFORE, Petitioner respectfully suggests that the record in this case is such that the writ of certiorari should be granted by this Court, and the cause reviewed.

Respectfully submitted,

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APPENDIX A

Illinois Revised Statutes, Bar Edition, 1943, Chap. 38, Par. 730, p. 1227, governing the appointment of counsel for indigent defendants in criminal cases:

"730. Counsel—Fees for indigent defendant.) Sec. 2. Every person charged with crime shall be allowed counsel, and when he shall state upon oath that he is unable to procure counsel, the court shall assign him competent counsel, who shall conduct his defense. In all cases counsel shall have access to persons confined, and shall have the right to see and consult such persons in private.

"Whenever it shall appear to the court that a defendant or defendants indicted in a capital case, is or are indigent and unable to pay counsel for his or her defense, it shall be the duty of the court to appoint one or more competent counsel for said defendant or defendants, who shall receive a reasonable sum for services, not to exceed fifteen dollars ($15.00) per day, for a period not exceeding five (5) days for necessary work performed in the preparation of said defense, and in addition thereto, not to exceed twenty-five dollars ($25.00) per day, for each day actually occupied in the trial of said case, and the court shall, upon an accurate and true statement of services rendered, in writing, under oath, by such counsel, enter an order for said reasonable compensation, the total of which shall not exceed the sum of two hundred fifty ($250.00) dollars for any defendant, directing the county treasurer of the county to pay the same, whether said defendant is convicted or acquitted: Provided, however, that no extra compensation shall be allowed in behalf of a defendant, if more than one counsel appear for said defendant. (As amended by act approved June 25, 1929. L. 1929, p. 344.)"

APPENDIX B

Illinois Revised Statutes, Bar Edition, 1943, Chap. 38, Par. 358, pp. 1184-1185, defining the crime of murder:

> "358. Murder.) Sec. 140. Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either expressed or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome, and death thereby occasioned. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart." Act of March 27, 1874.

Illinois Revised Statutes, Bar Edition, 1943, Chap. 38, Par. 360, p. 1185, setting the punishment for murder:

> "360. Murder—Punishment.) Sec. 142. Whoever is guilty of murder, shall suffer the punishment of death, or imprisonment in the penitentiary for his natural life, or for a term not less than fourteen years. If the accused is found guilty by a jury, they shall fix the punishment by their verdict; upon a plea of guilty, the punishment shall be fixed by the court." Act of March 27, 1874.

APPENDIX C

Fourteenth Amendment to the Constitution of the United States, Illinois Revised Statutes, Bar Edition, 1943, p. 18, Section 1 of which states:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."